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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/580,993 05/27/00 HONEA

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MICHAEL J COLITZ JR.  
217 HARBOR VIEW LANE  
LARGO FL 33770

MM91/1019

EXAMINER

VERBITSKY, G

ART UNIT

PAPER NUMBER

2859

DATE MAILED:

10/19/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/580,993

Applicant(s)

Honea

Examiner

Gall Verbitsky

Art Unit

2859



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☐ Responsive to communication(s) filed on \_\_\_\_\_

2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-11 is/are pending in the application

4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-11 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirements

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some\* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

15) ☒ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_

20) ☐ Other:

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the numerals described throughout the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Correction is required.

### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities:

- A) “witha” in line 15 should be replaced with --with a--,
- B) “the secured portion” in the second last line lacks antecedent basis.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. In this case, the “strengthening component” makes the claim language confusing because it is not clear what particular structure applicant means since said component is not shown in the drawings.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, 8-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanrath 940873, Fisher 5746001, Beeber 2994958 and Exhibit 1 by Lufkin [hereinafter Lufkin].

Hanrath discloses in Fig. 1 a tape comprising a sheath of a compound fabric (cloth) *a* of a pre-determined length and thickness having a front face, a rear face, a leading edge, a trailing edge, two parallel side edges, indicia made with a heavy marking in the center of the front face (continuing indicia), indicia along each side edge repeating indicia). The tape also comprises an insert (strengthening component) *b*.

Hanrath does not disclose the repeating indicia as claimed by applicant and the strengthening component being a single thread or a single filament (monofilament) and that heavy markings show foot numerals every 12 inches and light markings show inches and that the tape may be spooled.

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Fisher discloses in Fig. 1 a device comprising two sets of repeating indicia at side edges of the device wherein, repeating indicia A are spaced from each other at a distance D1, and repeating indicia B are spaced from each other at a distance D2, the distance D1 and the distance D2 are not equal (the numerals A, B and D1, D2 have been added by the Examiner, see attachment to the Office Action).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Hanrath so as to have the repeating indicia on one side edge spaced differently than the repeating indicia on the other side edge of the device, as taught by Fisher, in order to allow the user to use the device for various applications.

Beeber discloses in Fig. 2 a device in the field of applicant's endeavor wherein a strengthening component is a filament 10 on both sides of the device. Surfaces of the front and rear faces are thickened around the filaments.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the insert disclosed by Hanrath with two single filaments located on each side of the device, as taught by Beeber in order to provide the same strength to the device by using less material.

Lufkin discloses a device in the field of applicant endeavor comprising a spooled tape having heavy markings with numerals indicating feet measured every 12 inches and light markings indicating inches.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the markings on the device disclosed by Hanrath so as to have markings, as taught by Lufkin, in order to allow the user have a more precise numerical indication of the measurements applicable for the intended use.

It would have also been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Hanrath so as to make the tape capable of being spooled, as taught by Lufkin because the spooled tape will occupy less space when stored.

With respect to the particular length, width and distances (size) of the device and the strengthening component, i.e., 200 feet, 3 inches, 9 and 10 inches, 5 and 5-5/8 inches and 1mm as stated in claims 1, 3, 4 and 1 respectively, the particular size claimed by applicant, absent any criticality, is only considered to be the “preferred” size that a person having ordinary skill in the art at the time the invention was made would have found obvious to provide using routine experimentation based, among other things, on the intended use of the device.

See In re Boesch, 205 USPQ 215 (CCPA 1980).

With respect to “whereby” as stated in claim 1: It has been held that the functional “whereby” statement does not define any structure and accordingly can not serve to distinguish.

See In re Mason, 114 USPQ 127, 44 CCPA 937 (1957).

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7. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Hanrath, Fisher, Beeber and Lufkin as applied to claims 1-4, 8-11 above, and further in view of JP 405005601 hereinafter JP.

Hanrath, Fisher, Beeber and Lufkin disclose the device as stated above in paragraph 6.

They do not disclose the limitations of claim 5.

JP discloses in Fig. 1 a tape measure having measuring indicia on both, front and rear, faces.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Hanrath, Fisher, Beeber and Lufkin so as to have measuring indicia on both faces, as taught by JP, in order to provide the user with a plurality of different scales and allow the user to use the tape for applications requiring different accuracy.

8. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanrath, Fisher, Beeber and Lufkin as applied to claims 1-4, 8-11 above, and further in view of Ward 202610.

Hanrath, Fisher, Beeber and Lufkin disclose the device as stated above in paragraph 6.

They do not disclose the limitations of claim 6-7.

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Ward discloses a tape (fabric) which is coated (covered) with a strengthening component (rubber coating) to strengthen the tape, thus the strengthening component (coating) is located on a face of the tape.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Hanrath, Fisher, Beeber and Lufkin so as to have a strengthening component on top (face) of the tape, as taught by Ward because it was held that there is no invention in shifting the strengthening component disclosed by Hanrath, Fisher, Beeber and Lufkin to a different position since the operation of the device would not thereby be modified. *See In re Japikse*, 86 USPQ 70 (CCPA 1950).

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices.

10. Any inquiry concerning this communication should be directed to the Examiner Verbitsky whose telephone number is (703) 306-5473.

Any inquiry of general nature should be directed to the Group Receptionist whose telephone number is (703) 308-0956.

GKV

September 27, 2001



**Diego Gutierrez  
Supervisory Patent Examiner  
Technology Center 2800**





# United States Patent [19]

Fisher

[11] Patent Number: 5,746,001

[45] Date of Patent: May 5, 1998

## [54] TEACHING RULER

[76] Inventor: Delores Fisher, 151 East St., South  
Salem, N.Y. 10590

[21] Appl. No: 445,188

[22] Filed: May 19, 1995

[51] Int. Cl.<sup>6</sup> ..... G01B 3/04

[52] U.S. Cl. .... 33/484; 33/494; 33/679.1

[58] Field of Search ..... 33/484, 483, 485,  
33/486, 487, 492, 494, 755, 759, 760, 679.1

## [56] References Cited

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Primary Examiner—Christopher W. Fulton

## [57] ABSTRACT

A linear measurement ruler comprises a teaching aid for instruction in fractional and decimal units of linear measure.

10 Claims, 4 Drawing Sheets

